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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Computer III Further Remand Proceedings:	)	
Bell Operating Company	)	CC Docket No. 95-20
Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

GTE's REPLY COMMENTS

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SUMMARY

The record in this proceeding demonstrates the need to revisit the Commission's Computer III/ONA regulatory framework in light of the 1996 Act and current competitive developments. As a number of parties explain, the unbundling and other safeguards required by the 1996 Act allow competitive local exchange carriers to compete directly with incumbent carriers to provide underlying telecommunications services to information service providers ("ISPs"). The existence of these alternatives and regulatory requirements will in turn promote a competitive market for the telecommunications facilities and services used by ISPs and address the market-driven deployment of new services.

As such, as an initial matter, the Commission should adopt GTE's proposal to eliminate unnecessary Computer III/ONA reporting and other requirements. Further, as supported by a number of commenters, the Commission also should examine the continued viability of the Computer III/ONA regulatory regime as a whole and take additional steps to eliminate regulation as warranted. Such an approach is both consistent with the Ninth Circuit's remand and Section 11's mandate to eliminate regulation where competition safeguards the interests of consumers.

In contrast, the proposals by some to use this proceeding as a mechanism to expand the framework of Computer III/ONA are misguided. The Commission has neither the legal authority under Section 251 nor a sound policy basis to extend unbundled network element access to non-carrier ISPs. Further, expanding ONA to add regulatory requirements specifically tailored to information services is unnecessary, would increase existing problems caused by arbitrary distinctions among services,

users, and providers, and would impede efforts to develop rational and coherent regulatory and pricing structures. Rather than perpetuating or even exacerbating existing inefficient and artificial rate mechanisms, the Commission instead should eliminate those regulatory barriers that discourage the voluntary provision of expanded services to information service providers by incumbent local exchange carriers.

Finally, many parties agree that the Commission should reconcile its basic/enhanced regulatory structure with the definitions adopted in the 1996 Act. Consistent with the record, GTE submits that the Commission's recent analysis of these issues in the context of Universal Service and other proceedings plainly indicates that the 1996 Act in no way alters the agency's pre-existing definitional and regulatory framework.

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GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated telecommunications companies (collectively "GTE"),[1] hereby file their Reply Comments in response to the Further Notice of Proposed Rulemaking issued in the above-captioned dockets.[2] As detailed below, the record supports the elimination of unnecessary Computer III/ONA requirements in light of the 1996 Act and the emergence of competition in the market for local exchange services. The Commission should allow the marketplace, rather than regulatory requirements, to ensure that the information services market remains

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[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, GTE Hawaiian Tel International Incorporated, GTE Wireless Incorporated, and GTE Airfone Incorporated.

[2] Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements, CC Docket No. 95-20, CC Docket No. 98-10, FCC 98-8 (rel. Jan. 30, 1998) (Further Notice of Proposed Rulemaking).

robustly competitive and that consumers continue to enjoy the development and deployment of new services.

I. THE RECORD SUPPORTS GTE'S PROPOSAL TO REMOVE UNNECESSARY COMPUTER III/ONA REQUIREMENTS.

In its opening Comments, GTE maintained that the Commission can and should eliminate unnecessary Computer III/ONA requirements consistent with its obligations under Section 11 of the Communications Act. In particular, GTE explained that the following specific requirements should be streamlined or removed: (1) annual ONA reports; (2) semi-annual ONA reports; (3) Computer III/ONA non-discrimination obligation and quarterly reports; and (4) the Computer III network disclosure obligation.[3]

A number of parties agree that many Computer III/ONA requirements are no longer necessary in light of the 1996 Act and the emergence of competitive alternatives to incumbent local exchange carrier ("ILEC") services. For example, Bell Atlantic and U S West urged the FCC to streamline or reduce many aspects of the annual, semi-annual and non-discrimination reporting requirements because much of the information in the reports either does not change or may be obtained from a carrier upon request, and ISPs do not appear to be using these reports.[4] Along similar lines, there also is

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[3] Comments of GTE Service Corporation, CC Docket No. 95-20, CC Docket No. 98-10, at 17-22 (filed Mar. 27, 1998) ("GTE Comments").

[4] Comments of Bell Atlantic, CC Docket No. 95-20, CC Docket No. 98-10, at 20-23 (filed Mar. 27, 1998) ("Bell Atlantic Comments"); Comments of U S West, Inc., CC Docket No. 95-20, CC Docket No. 98-10, at 50-54 (filed Mar. 27, 1998) ("U S West Comments").

agreement among AT&T, several ILECs, and others that the Computer III network disclosure rule should be eliminated because it is rendered unnecessary by the broader and more detailed network disclosure obligations adopted pursuant to Section 251 of the Act.[5] Indeed, the relatively few information service providers ("ISPs") who addressed the issue of reporting requirements failed to advance a reasoned justification for retaining these reports.[6]

Moreover, in GTE's view, the record offers the Commission a compelling basis to take further action to eliminate all Computer III/ONA requirements. As SBC Communications noted, "the 1996 Act has created a multitude of viable alternatives to BOC networks for carriers that provide information services, and for pure ISPs indirectly."[7] In particular, as emphasized by a number of carriers, the extent of the unbundling required by Section 251 of the Act far exceeds the "fundamental unbundling" contemplated by the Commission in the Computer III/ONA framework.[8] As

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[5] Comments of AT&T Corp., CC Docket No. 95-20, CC Docket No. 98-10, at 17-18 (filed Mar. 27, 1998) ("AT&T Comments"); Bell Atlantic Comments at 23; Comments of the Information Technology Association of America, CC Docket No. 95-20, CC Docket No. 98-10, at 18 (filed Mar. 27, 1998) ("ITAA Comments"); U S West Comments at 46-48.

[6] *See, e.g.,* ITAA Comments at 23 (opposing elimination of all BOC non-discrimination reporting requirements).

[7] Comments of SBC Communications, Inc., CC Docket No. 95-20, CC Docket No. 98-10, at 15 (filed Mar. 27, 1998) ("SBC Comments").

[8] Comments of Ameritech, CC Docket No. 95-20, CC Docket No. 98-10, at 2-5 (filed Mar. 27, 1998) ("Ameritech Comments"); Bell Atlantic Comments at 15-16; Comments of BellSouth Corporation, CC Docket No. 95-20, CC Docket No. 98-10, at 10-13 (filed Mar. 27, 1998) ("BellSouth Comments").

a practical and legal matter, this unbundling coupled with the current competitive marketplace for information services not only addresses the Ninth Circuit's concerns, but also obviates the continued need for ONA. To this end, Bell Atlantic urged the Commission to phaseout all ONA requirements within a three-year timeframe.[9]

In light of these concerns, the Commission should carefully examine the continued viability of ONA given the evidence offered in this proceeding demonstrating that increasing competition in the market for information services and local exchange services used by ISPs addresses the FCC's underlying rationale behind the Computer III/ONA framework. As such, at a minimum, the Commission should determine that the present regulatory and competitive landscape permits immediate streamlining or elimination of the Computer III/ONA reporting, non-discrimination, and disclosure obligations as proposed by GTE, and plainly does not support the adoption of new regulations.

II. THERE IS NO JUSTIFICATION FOR EXPANDING ILECS' OBLIGATIONS UNDER THE COMPUTER III/ONA FRAMEWORK.

A. Those Parties Who Support Mandating Section 251 Unbundling for Pure ISPs Fail To Adequately Address the Legal and Practical Consequences of Such a Proposal.

Numerous commenters agree with GTE that the Commission lacks legal authority under Section 251 of the Act to make unbundled network elements ("UNEs")

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[9] Bell Atlantic Comments at 14-18. Bell Atlantic, however, suggests that this phaseout would not affect the statutory obligations of ILECs under Sections 222 or 251(c)(5) of the Communications Act. *Id.*

available to non-carrier (so called "pure") information service providers. In this regard, the Association For Local Telecommunications Services ("ALTS") explains that "the 1996 Act is unmistakably clear in restricting access to UNEs only to 'carriers' as defined by the 1996 Act."[10] Along similar lines, MCI recognized the "statutory and jurisdictional problems in attempting to shoehorn ISPs by regulation into the Section 251 framework" and stated that "[t]here appears to be no authority under Section 251 itself to do so."[11]

Further, a broad array of commenters also detail the significant practical problems that would result if the Commission were to mandate that ILECs extend "Section 251-type" unbundling rights to pure ISPs. BellSouth and U S West note, for example, that granting ISPs "carrier-like" rights without the concomitant obligations will exacerbate present inconsistencies in the regulatory treatment of ISPs and carriers.[12] Indeed, the Information Technology Association of America ("ITAA") recognized the potential for disparate treatment in agreeing that "it is not necessary or advisable for the Commission to give ISPs 'carrier-like' Section 251 rights -- especially if the *price of*

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[10] Comments of the Association For Local Telecommunications Services, CC Docket No. 95-20, CC Docket No. 98-10, at 10 (filed Mar. 26, 1998); *see also* BellSouth Comments at 27 ("ISPs that do not also provide telecommunications services ('pure ISPs') are not telecommunications carriers and thus do not have statutory rights to request interconnection or access to unbundled network elements under Section 251(c)(1)"); SBC Comments at 25 ("Congress could well have granted pure ISPs the more extensive Section 251-type unbundling rights, but it clearly chose not to do so. That choice must be respected.").

[11] Comments of MCI Telecommunications Corporation, CC Docket No. 95-20, CC Docket No. 98-10, at 70 (filed Mar. 27, 1998) ("MCI Comments").

[12] BellSouth Comments at 28; U S West Comments at 24-25.

these rights is the imposition of 'carrier-like' regulatory obligations."[13] In addition, the California Public Utilities Commission ("California PUC") cautioned that by extending Section 251 rights to pure ISPs, these providers would "essentially be unregulated common carriers with the ability to circumvent any or all of the obligations imposed on common carriers to further the public interest."[14] The California PUC further underscored the incentive this would create for currently regulated carriers "to become decertified and to operate under the FCC's classifications as unregulated ISPs."[15]

Those commenters who urged the Commission to mandate unbundled access and other rights (such as collocation) for pure ISPs fail to address these serious issues. For example, in urging the Commission to "[e]xtend[ ] the availability of UNEs to users through ONA," the Ad Hoc Telecommunications Users Committee ignores how the Commission and the states would address issues such as pricing, the imposition of access charges, and maintaining existing universal service support mechanisms.[16] In at least an attempt to recognize the "slippery slope" of mandating UNE access to pure ISPs, Helicon Online suggests that any such additional UNE and collocation rights should be limited to dedicated data services and that "ISPs should not be permitted to

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13 ITAA Comments at 24 (emphasis added).

14 Comments of the People of the State of California and the Public Utilities Commission of the State of California, CC Docket No. 95-20, CC Docket No. 98-10, at 5 (filed Mar. 27, 1998).

15 *Id.*

16 Comments of the Ad Hoc Telecommunications Users Committee, CC Docket No. 95-20, CC Docket No. 98-10, at 11 (filed Mar. 27, 1998) ("Ad Hoc Telecommunications Users Comments").

provide telephony services or other switched access services" without becoming certified as a CLEC.[17] However, Helicon fails to explain how this "restriction" could be implemented as a legal or practical matter, particularly as IP-telephony services continue to be deployed and given the fact that ISPs may hand-off traffic to a switched backbone network.

Even more significantly, these parties appear wholly to disregard the fact that pure ISPs may receive the statutory rights of Section 251 directly by becoming a carrier. As NorthPoint Communications Inc., a competitive local exchange carrier offering xDSL service, emphasizes, "any ISP or non-ISP currently has the ability . . . to obtain certification as a carrier and follow the other state and federal requirements attendant to carrier status."[18] Instead, these commenters merely seek to reap the statutory benefits of Section 251 without the regulatory obligations associated with becoming a carrier.[19] Mandating such a result would not promote competition in the information services market, but rather would skew the regulatory balance crafted in the 1996 Act and perpetuate irrational and arbitrary regulatory distinctions among providers.

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[17] Comments of Helicon Online, L.P., CC Docket No. 95-20, CC Docket No. 98-10, at 7 (filed Mar. 27, 1998) ("Helicon Comments").

[18] Comments of NorthPoint Communications, Inc., CC Docket No. 95-20, CC Docket No. 98-10, at 2 (filed Mar. 27, 1998).

[19] *See* Ad Hoc Telecommunications Users Comments at 12 (stating that "the daunting administrative and regulatory obligations (not to mention the expense) entailed in becoming a telecommunications carrier would not be worth the cost and effort if the primary motivation is to take advantage of Section 251").

As GTE explained in its opening Comments, mandated access to UNEs by non-carriers also will present a substantial risk of impeding efforts to adopt rational and competitive pricing structures and will invite uneconomic arbitrage. In addition, mandated UNE access would complicate resolution of critical issues currently before the courts (such as the FCC's decision to exclude access charges from UNEs) and the Commission, including the application of access charges and reciprocal compensation to Internet traffic and the collection and distribution of universal service support mechanisms. Accordingly, such a proposal should not be adopted.

B. Expanding Computer III/ONA Obligations Is Not Justified and Would Be Inconsistent With the Public Interest.

Predictably, several commenters apparently seek to use this proceeding as another attempt to re-open issues already addressed by the Commission or to expand ILECs' obligations under the guise of the ONA/Computer III framework. These proposals should be rejected because they not only contradict the FCC's mandate under Section 11 of the Act, but also seek to thwart the ability of market forces to promote a robustly competitive local exchange and information services market.

For example, the Commission should decline to follow MCI's suggestion to use the rubric of ONA to address the scope of ILECs' obligations under Section 251. MCI's proposal to preclude ILECs from using particular UNEs "until the UNE is actually made available to all requesting carriers" is an attempt to rewrite the scope of Section 251, which already requires ILECs to make UNEs available at technically feasible points on

rates and terms that are just, reasonable, and non-discriminatory.[20] Moreover, any concern about the process for ensuring that UNEs are available is addressed by the negotiation and arbitration framework established by Congress in Section 252.

GTE also strongly disagrees with MCI's proposal to "expand ONA to cover the unbundling that is needed for participation in broadband packet-switched information services" by mandating subloop unbundling.[21] In its Local Competition Order, the Commission considered and rejected this very proposal, finding "that proponents of subloop unbundling do not address certain technical issues" and that technical feasibility is "best addressed at the state level on a case-by-case basis at this time."[22] MCI has failed to explain why subloop unbundling could somehow be more feasible if required in this proceeding under the Computer III/ONA framework. Accordingly, MCI's attempts to rewrite Section 251 and the Commission's interconnection rules in the context of ONA should be rejected.

In addition, there is no basis to support the proposals offered by some commenters that the Commission modify its Computer III/ONA framework by adding new regulatory requirements tailored to ISPs. For example, WorldCom urges the Commission to adopt a "cost-based federal interconnection arrangement" requiring the

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20 *See* MCI Comments at 66.

21 *See id.* at 68-69.

22 Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, 11 FCC Rcd 15499, 15696 (1996) (First Report and Order) (subsequent history omitted).

provision of unbundled, tariffed network features and functions.[23] This proposal has it exactly backwards.[24] Rather than adding to existing arbitrary distinctions in the access marketplace based on particular users or services, the Commission should be working to eliminate those classifications that stand in the way of a coherent and rational regulatory structure. A structure in which differences in price no longer depend on arbitrary distinctions among users and usage will provide more efficient price signals for new entrants and will promote the development of sustainable competition.[25]

C. The Commission Should Instead Eliminate Artificial Regulatory Barriers to the Provision of Unbundled Element Access to Pure ISPs.

Several commenters suggest that the Commission should mandate that ILECs make additional services available through the ONA/Computer III framework. For example, ITAA and other commenters support requiring the provision of local data

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[23] Comments of WorldCom, Inc., CC Docket No. 95-20, CC Docket No. 98-10, at 5 (filed Mar. 27, 1998).

[24] Indeed, asserting that the FCC should establish a federal mechanism for access directly undercuts many competitive local exchange carriers' and ISPs' assertions that Internet traffic is "local" in nature for purposes of reciprocal compensation.

[25] Moreover, arguments to adopt structural separation requirements in lieu of non-structural safeguards are misguided. GTE has not been subject to the structural safeguards in the context of Computer III/ONA and does not fall within the separate affiliate requirements of the 1996 Act. Further, there is no justification to predicate the need for structural separation on the basis of the recent audits of Southwestern Bell Telephone Company's and GTE's telephone operation assets. *See* Comments of Compuserve Network Services, CC Docket No. 95-20, CC Docket No. 98-10, at 8 (filed Mar. 27, 1998) ("Compuserve Comments"); MCI Comments at 61-63. GTE questions the relevance of these audits to this proceeding. In any case, GTE shortly will furnish a public response addressing the results of its audit.

circuits,[26] while the Commercial Internet eXchange Association argues that ISPs require "functional collocation" rights from ILECs.[27] GTE disagrees that regulatory mandates are the way to ensure that ISPs may obtain additional services and features. Rather, the Commission should remove the regulatory barriers that might discourage an ILEC from providing additional functionality on a voluntary basis and not attempt to substitute its judgment for that of the market by adopting new regulatory requirements.

As GTE explained in its Comments, the Commission may create a favorable environment for increasing the availability of unbundled offerings on a voluntary basis by allowing carriers to establish more rational and consistent pricing structures. By eliminating the arbitrary regulatory classifications that distinguish between providers or users, the FCC can promote sustainable competition and allow carriers to price services in a manner that sends rational entry signals. In turn, the elimination of inefficient and artificially imposed rate structures will properly address the regulatory issues discussed above (such as access charges and universal service) that might discourage greater unbundled access to local carrier networks.

In addition, there is ample evidence in the record demonstrating that the competitive marketplace is working and that ISPs are already receiving the benefits of

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[26] ITAA Comments at 25; *see also* Comments of APK Net, Ltd. *et. al* , CC Docket No. 95-20, CC Docket No. 98-10, at 13-16 (filed Mar. 27, 1998) (noting that ILECs should be required to offer "a federally-tariffed unswitched clean copper circuit service everywhere that end users want to have high-bandwidth Internet access").

[27] Comments of the Commercial Internet eXchange Association, CC Docket No. 95-20, CC Docket No. 98-10, at 12 (filed Mar. 27, 1998); *see also* Helicon Comments at 7.

competition. Bell Atlantic notes, for example, that the number of Internet service providers has tripled since 1996 and potent competitors -- such as AT&T, America Online, Microsoft -- exist in contrast to more limited ILEC Internet access service offerings.[28] Similarly, SBC states that at least 160 competitive local exchange carriers are operating in its territory and describes the range of competitors -- such as cable or wireless providers -- that offer alternatives to ILEC local exchange services.[29]

Given these developments, imposing new regulatory requirements would be inconsistent with the FCC's mandate under Section 11 to remove regulations where competition can protect the interests of consumers. In short, GTE agrees with Bell Atlantic that "the marketplace, not unnecessary ONA mandates, will ensure that ISPs' needs are fully met."[30]

III. THE RECORD UNDERSCORES THE NEED TO ADOPT A CONSISTENT DEFINITIONAL STRUCTURE.

There is strong support in the record to reconcile the Commission's existing definitional structure with the definitions set forth in the 1996 Act. Commenters uniformly agreed that the FCC's definition of "basic" services should be deemed to be equivalent to the 1996 Act's definition of "telecommunications" services,[31] and a number

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28 Bell Atlantic Comments at 4-6.

29 SBC Comments at 14-15.

30 Bell Atlantic Comments at 16.

31 *See, e.g.,* Comments of America Online, Inc., CC Docket No. 95-20, CC Docket No. 98-10, at 5-8 (filed Mar. 27, 1998) ("America Online Comments"); Ameritech Comments at 14-15; AT&T Comments at 7-9; Bell Atlantic Comments at 19-20;

(Continued...)

of commenters agreed that the Act's definition of "information" services was intended to include the FCC's definition of "enhanced" services.[32]

Consistent with the record in this proceeding, the FCC recently squarely addressed these issues in its April 10, 1998, *Report to Congress* on Universal Service.[33] In that report, the Commission affirmatively held: (1) "that Congress intended the categories of 'telecommunications service' and 'information service' to parallel the definitions of 'basic service' and 'enhanced service,' developed in [the] . . . *Computer II* proceeding . . . ,"[34] and (2) that "the categories of 'telecommunications service' and 'information service' in the 1996 Act are mutually exclusive."[35] GTE

(...Continued)
Compuserve Comments at 12-15; MCI Comments at 11-12.

[32] *See* America Online Comments at 5-8; AT&T Comments at 7-8; Compuserve Comments at 12; ITAA Comments at 3-6.

[33] *Federal-State Joint Board on Universal Service,* CC Docket No. 96-45, FCC 98-67 (rel. April 10, 1998) (Report to Congress) [hereinafter *Universal Service Report*].

[34] *Id.* ¶ 21.

[35] *Id.* ¶ 39. In the *Non-Accounting Safeguards First Report and Order,* the Commission concluded that "all of the services . . . previously considered to be 'enhanced services' are 'information services.'" *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* 11 FCC Rcd 21905, 21955 (1996) (First Report and Order and Further Notice of Proposed Rulemaking). In reaching this determination, the Commission emphasized that "interpreting 'information services' to include all 'enhanced services' provides a measure of regulatory stability for telecommunications carriers and ISPs alike by preserving the definitional scheme under which the Commission exempted certain services from Title II regulation." *Id.* at 21956. Likewise, as noted in the *Report to Congress,* the Commission observed in the *CPNI Second Report and Order* that, Commission precedent has treated "telecommunications services and information services and as 'separate, non-overlapping categories, so that information services do not constitute 'telecommunications' within the meaning of the 1996 Act.'" *See Universal*
(Continued...)

submits that the Commission's analysis in the *Universal Service Report* answers the definitional issues raised in the instant proceeding by plainly indicating that the terminology used in the 1996 Act in no way alters the pre-1996 regulatory framework. In addition, GTE urges the Commission to apply these definitions and its regulations in a consistent manner.

IV. CONCLUSION

For the foregoing reasons, the Commission should eliminate unnecessary Computer III/ONA requirements, not mandate additional ONA unbundling for GTE, and rely on market forces to continue to promote a competitive information services market.

(...Continued)
Service Report, ¶ 33 (citing *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended,* CC Docket No. 96-115, CC Docket No. 96-149, FCC 98-27, ¶¶ 72-73 (rel. Feb. 26, 1998) (Second Report and Order and Further Notice of Proposed Rulemaking)).

Such an approach not only addresses the Ninth Circuit's concerns, but also is required by Section 11 of the Act.

Respectfully submitted,

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